

STATE OF MICHIGAN  
COURT OF APPEALS

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MARY LITTLE and MELVIN LITTLE,

UNPUBLISHED  
February 17, 1998

Plaintiffs-Appellants,

v

No. 199784  
Macomb Circuit Court  
LC No. 96-001423 NO

VILLAGE SQUARE CONSUMER HOUSING  
COOPERATIVE, a/k/a VILLAGE SQUARE  
COOPERATIVE,

Defendant-Appellee.

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Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

MEMORANDUM.

In this personal injury negligence action arising from a slip and fall, plaintiff Mary Little tripped over the root of a tree located immediately outside her condominium unit, which root was protruding through the surface of the soil. The trial court granted defendant's motion for summary disposition based on the "open and obvious" danger rule, *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 611-614; 537 NW2d 185 (1995). This appeal of right is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs contend that defendant condominium association had a contractual duty to maintain and repair the common areas of the premises; the tree was located in such a common area. They argue that the defense of open and obvious danger relates to a duty to warn, but it will not exonerate a defendant from liability for failure to maintain and repair premises under its control and in its possession. *Walker v City of Flint*, 213 Mich App 18, 21-22; 539 NW2d 535 (1995).

That is a correct legal principle, but it applies only when there is some defect in the premises which, despite its open and obvious character, represents an unreasonable danger. *Bertrand, supra*, 449 Mich at 612. While plaintiffs may have complained about the tree because of the protruding roots, that is in the nature of trees, and because it does not constitute an unreasonable danger, there is no "defect" which defendant was contractually obligated to maintain or repair. The roots of the tree were not protruding through or causing sidewalks or walkways to become uneven or hazardous, and we find

no suggestion that the tree or its roots were unavoidable for persons exercising due care for their own safety.

Affirmed.

/s/ Jane E. Markey

/s/ Martin M. Doctoroff

/s/ Michael R. Smolenski